

## § 36.405

a professional office of a health care provider only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) For the purposes of this section, *shopping center or shopping mall* means—

(i) A building housing five or more sales or rental establishments; or

(ii) A series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of *place of public accommodation* in §36.104 are considered sales or rental establishments. The facility housing a *shopping center or shopping mall* only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

## § 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not

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threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

## § 36.406 Standards for new construction and alterations.

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).

(b) The chart in the appendix to this section provides guidance to the user in reading appendix A to this part (ADAAG) together with subparts A through D of this part, when determining requirements for a particular facility.

### APPENDIX TO § 36.406

This chart has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

|                       | Subparts A–D   | ADAAG  |
|-----------------------|--|--|
| Application, General. | 36.102(b)(3): public accommodations.<br>36.102(c): commercial facilities.<br>36.102(e): public entities.<br>36.103 (other laws)<br>36.401 (“for first occupancy”).<br>36.402(a) (alterations).   | 1, 2, 3, 4.1.1.  |
| Definitions .....     | 36.104: commercial facilities, facility, place of public accommodation, private club, public accommodation, public entity, religious entity.<br>36.401(d)(1)(ii),<br>36.404(a)(2): shopping center or shopping mall.<br>36.401(d)(1)(i),<br>36.404(a)(1): professional office of a health care provider.<br>36.402: alteration; usability.<br>36.402(c): to the maximum extent feasible. | 3.5 Definitions, including: addition, alteration, building, element, facility, space, story.<br><br>4.1.6(j), technical infeasibility. |
| New Construction.     | 36.401(a) General ..   | 4.1.2.   |

## Department of Justice

## § 36.502

|  | Subparts A–D   | ADAAG                              |
|--|--|------------------------------------|
| General .....  | 36.401(b) Commercial facilities in private residences.<br>36.207 Places of public accommodation in private residences. | 4.1.3.                             |
| Work Areas .....   | .....  | 4.1.1(3).                          |
| Structural Impracticability.   | 36.401(c) .....  | 4.1.1(5)(a).                       |
| Elevator Exemption.  | 36.401(d) .....  | 4.1.3(5).                          |
| Other Exceptions.  | 36.404 .....   | 4.1.1(5), 4.1.3(5) and throughout. |
| Alterations: General.  | 36.401(b): commercial facilities in private residences.<br>36.402 .....  | 4.1.6(1).                          |
| Alterations Affecting an Area Containing A Primary Function; Path of Travel; Disproportionality. | 36.403 .....   | 4.1.6(2).                          |
| Alterations: Special Technical Provisions.   | .....  | 4.1.6(3).                          |
| Additions .....  | 36.401–36.405 .....  | 4.1.5.                             |
| Historic Preservation.   | 36.405 .....   | 4.1.7.                             |
| Technical Provisions.  | .....  | 4.2 through 4.35.                  |
| Restaurants and Cafeterias.  | .....  | 5.                                 |
| Medical Care Facilities.   | .....  | 6.                                 |
| Business and Mercantile.   | .....  | 7.                                 |
| Libraries .....  | .....  | 8.                                 |
| Transient Lodging (Hotels, Homeless Shelters, Etc.).   | .....  | 9.                                 |
| Transportation Facilities.   | .....  | 10.                                |

[Order No. 1513–91, 56 FR 35592, July 26, 1991, as amended by Order No. 1836–94, 59 FR 2675, Jan. 18, 1994]

### § 36.407 Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2001.

[Order No. 2191–98, 63 FR 64837, 64838, Nov. 23, 1998]

### §§ 36.408–36.499 [Reserved]

## Subpart E—Enforcement

### § 36.501 Private suits.

(a) *General.* Any person who is being subjected to discrimination on the basis of disability in violation of the Act or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the Act or subpart D of this part may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) *Injunctive relief.* In the case of violations of § 36.304, §§ 36.308, 36.310(b), 36.401, 36.402, 36.403, and 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

### § 36.502 Investigations and compliance reviews.

(a) The Attorney General shall investigate alleged violations of the Act or this part.

(b) Any individual who believes that he or she or a specific class of persons has been subjected to discrimination